Civil Writ Petition No.1099/94
Sanjay Agrawal Vs. Union of India & Ors

Date of Order ::: 20/07/2005

Hon'ble Mr. Justice Ajay Rastogi

Mr.Sunil Samdaria for petitioner.
Mr.R.C.Joshi for respondent Bank.
Mr.Sanjay Pareek, for respondent-Union of India

By instant writ petition, petitioner has assailed validity of order dt.15/02/90 (Ex.R.2/2), whereby appropriate Government has refused to make Reference of grievance raised by him before Conciliation Officer.

Petitioner joined service as a Clerk in Vijaya Bank (respondent 2) on 18/08/86 and worked till 16/09/86. Again he was engaged from 10/11/86 to 09/12/86 and thereafter for a period from 11/12/86 to 09/01/87, as is apparent from certificate dt.19/01/87(Ex.1), mentioning about his fixed term appointment against leave vacancy purely on temporary basis.

Against his termination, which was given effect from 09/01/87, National Confederation of Bank Employees, which was espousing cause of the petitioner, raised an industrial dispute by making application (Ex.2) on 21/08/89 U/s 2A of Industrial Disputes Act, 1947 ("**the Act**") before Assistant Labour Commissioner (Central). The Conciliation Officer called upon respondent Bank, but since no settlement could be arrived at, sent his failure report to appropriate Government, along with letter

dt.07/12/89 (Ex.3). Appropriate Government (respondent 1) after taking note of material on record, refused to make Reference to Industrial Tribunal for adjudication of dispute in exercise of powers conferred U/s 12(5) of the Act, vide order dt.15/02/90 (Ex.R.2/2), which assigned following reasons for rejection : -

> "It appears that the workman was engaged by the Bank for specific period and termination of is service on the expiry of that period cannot be said to have been "**retrenched**" in terms of amended definition of '**retrenchment**' given under Section 2(oo) (bb) of the amended ID Act, 1947 enforced from 18/08/84."

Again application (Ex.5) was filed on 22/01/93 by National Confederation of Bank Employees before Assistant Labour Commissioner (Central) for review of the matter – that too was rejected vide letter dt.22/02/93 (Ex.5) in view of earlier rejection vide letter dt.15/02/90 (Ex.R.2/2) referred to therein. Hence this writ petition.

Shri Sunil Samdaria, Counsel for petitioner urged that once there was a dispute raised by petitioner workman about his termination that it was violative of Ss.25-G & 25H of the Act, adjudication of dispute by appropriate Government, itself, was not permissible and appropriate Government was only required to examine as to whether complaint made is either perverse or frivolous and do not merit for a Reference, but appropriate Government has examined the dispute, itself, on merits, which, according to

him, is beyond scope of S.12 of the Act, thereby impugned decision of respondent is not legally sustainable.

Shri Samdaria further urged that work of petitioner workman may be for a short period but others were also engaged in same manner – detailed were referred to by him even before the Assistant Labour Commissioner and in para 4 of present writ petition, which appropriate Government failed to consider. According to him, retaining other similarly placed workman or being engaged after services of petitioner workman being dispensed with, is in violation of Ss.25G & 25H of the Act, for which working of a workman for 240 days as required under law, is not necessary.

Shri Samdaria further urged that the issues as to whether termination which has been given effect to, from 09//01/87; or whether the appointment was bonafidely for a fixed term or was a mere camouflage; or case of petitioner workman fell within S.2(oo)(bb) of the Act, such an industrial dispute could be adjudicated before the Tribunal alone. According to him, reasons assigned by appropriate Government for declining to make reference, are not germane and therefore, offends to S.12(5) of the Act.

In support of contentions, Shri Samdaria placed reliance upon decisions of the Apex Court in **(1) Telco Convoy Drivers Mazdoor Sangh Vs. State of Bihar (1989(3) SCC 271), so also of this Court in (1) Bhikha Ram Vs. State of Rajasthan (2001(1) WLC (Raj)**

163); (2) Ramgopal Pareek Vs. State (2002(1) WLC (Raj) 53); & (3) Alcobex Metals Vs. State (2004(WLC (Raj) (UC) 260).

Reply to writ petition has been filed by respondent Bank. Shri R.C.Joshi and Sanjay Pareek, appearing respectively for respondents 2 & 1, submitted that despite the fact that appropriate Government had earlier refused to make Reference for adjudication of the dispute vide letter dt.15/02/90 (Ex.R.2/2), against the said refusal, writ petition has been filed after almost five years without reasonable justification for the delay in question, except that the Conciliation Officer was again approached vide application dt.22/01/93 (Ex5) for reconsideration of the matter, but that itself is not sufficient cause for the delay and, therefore, such a delay is sufficient for rejection of the writ petition.

On merits, Shri R.C.Joshi, Counsel for respondent Bank urged that appointment of petitioner was for fixed term on temporary basis and was engaged against leave vacancy as is evident from appointment order dt.18/08/86 (Ex.R.2/1); and according to him, other three employees referred to in para 4 of petition, services of first two employees – Miss Kiran Sehgal & Miss Swpna Quatra, were dispensed with respectively from 15/12/86 and 31/10/86; and so far as third employee Miss Anisha Banu Usmani is concerned, she worked from 17/12/86 to 15/01/87, and from 19/01/87 to 20/03/87 and to meet out emergent

requirement, temporary engagement was made for fixed period and since none of three named above, are in employment with respondent Bank, question of violation of S.25G & 25H of the Act does not hold good. It was further submitted that there is no industrial dispute which requires adjudication particularly in the facts of present case, when there is no violation either of S.25G or S.25H of the Act and it is not the case of petitioner that appointment offered to him for fixed term was either not bonafide or was merely a camouflage so as to relieve of obligation under the Act.

Shri Joshi further urged that in case of present petitioner, it was a fixed term employment which automatically came to an end on 09/01/87, and now making a reference at such belated stage, even if such an industrial dispute is raised for adjudication, will not hold good.

Shri Sanjay Pareek, Counsel for respondent No.1, supported the arguments made by Shri R.C.Joshi, and further contended that when material on record does not disclose any violation of provisions of Ss.25G & 25H of the Act, no error has been committed by appropriate Government in rejecting his claim to make out a case of Reference in exercise of S.12(5) of the Act, particularly when prima facie material has not been placed by petitioner on record to justify if at all an industrial dispute being required to be referred for adjudication under the Act.

I have considered rival contentions of the

parties and perused material on record. Before I examine the dispute on merit, I would like to first deal with preliminary objection raised by respondent in regard to belatedly filing of writ petition. From a perusal of record I find that after rejection of application by appropriate Government vide order dt.15/02/90 (Ex.R.2/2, petitioner again approached for review & reconsideration of the matter, but the same was rejected by Assistant Labour Commissioner vide order dt.22/02/1993 (Ex.6) and thereafter he made certain representation and approached this Court by filing present petition. In my opinion, petitioner made efforts after rejection of his application vide order dt.15/02/90 (Ex.R.2/2), and I find sufficient & reasonable cause for the delay, in approaching to this Court. Hence preliminary objection raised by respondents is over-ruled and stands rejected.

As regards merits of the case, S.10 of the Act is relevant for consideration. It provides for Reference of disputes to Boards, Courts or Tribunals, where appropriate Government is of opinion that an industrial dispute exists, and on consideration of the report submitted by Conciliation Officer, if appropriate Government is satisfied that there is an Industrial dispute, the same is to be referred to the Board, Court or Tribunals as the case may be, for adjudication U/s 10 of the Act, and if appropriate Government is satisfied that no industrial dispute arises in the facts & circumstances on the basis of material on record, after recording its reasons, can communicate the same to the party concerned. S.12(5)

of the Act provides as under : -

> "(5) If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal, it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor."

In view of provisions quoted above, it is the appropriate Government to take into consideration report referred to by Conciliation Officer, and other material for its satisfaction that there is at all a case for Reference of industrial dispute U/s 10 of the Act, which requires adjudication. In later situation, appropriate Government must record and communicate to the parties concerned, its reasons for not making such a reference. In such circumstances, appropriate Government has to apply its mind for its satisfaction being recorded for taking decision for not making reference.

It is true that no such adjudication of industrial dispute of any nature, can be made by appropriate Government for taking decision at the stage of consideration U/s 12(5) for making Reference U/s 10 of the Act. But prima facie, in my opinion, it can always be looked into for its satisfaction as to whether an industrial dispute of any nature arises or makes out from the facts and material on record.

In present facts situation based on material on record, indisputably, petitioner had

worked for three different spell of time that too for a shorter period, inasmuch as his appointment was for a fixed term against a leave vacancy, which came to an end over & expiry of exigency as the case may be. That apart, out of those three named supra, services of two of whom were too dispensed with much before and only one Miss Usmani worked upto 21/03/87; and there is nothing on record to show that after March, 87, there was any workman ever engaged in the capacity in which petitioner was working with respondent Bank. Rather on the material on record, petitioner was not able to show even prima facie that there was at all an industrial dispute which required adjudication. Mere submission being made of violation of Ss.25-G & 25-H of the Act, is not sufficient unless there is prima facie some material placed on record so as to warrant Reference of an industrial dispute which at all requires adjudication. In present case, in my opinion prima facie the petitioner failed to point out violation either of S.25G or S.25H of the Act, and at the best he could claim continuance upto 20/03/87.

Judgment, relied by Counsel for petitioner, in ***Telco Drivers' case (supra)***, of the Apex Court was of a case where question arose as to whether employees, who approached for raising industrial dispute are workmen or not; and the Apex Court observed that such a question/issue, can be adjudicated only by way of reference, and cannot be decided by appropriate Government at its own without

making a reference for adjudication by the Tribunal. Therefore, the Apex Court held that when dispute related to whether convoy drivers of TELCO were to be treated as workmen or not, the Government is not entitled to go into the question whether master & servant relationship existed and, on the basis of its finding in the negative, refused to make reference of the dispute, which was held to be unjustified. The Apex Court held as under : -

> "Further, the government should be very slow to attempt an examination of the demand with a view to declining reference and courts will always be vigilant whenever the government attempts to usurp the powers of the Tribunal for adjudication of valid disputes, and that to allow the government to do so would be to render Section 10 & Section 12(5) of the Act nugatory."

In these different sets of circumstances, in my opinion, the decision (supra) does not render any help to petitioner.

In another decision cited by Shri Samdaria, in ***Bhikamram Vs. State (supra)***, the State Government declined to make Reference after holding that workman had not completed 240 days of service, and the State Government undertook the exercise of deciding, itself without adjudication that the workman was not able to prove that he had completed 240 days in a calendar year, and therefore, rejection of application seeking reference of dispute was not held by this Court to be justified. It will be of no assitance to the petitioner.

In ***Ramgopal Pareek Vs. State (supra)*** rendered in view of law laid down in ***TELCO Vs. State (supra),*** the Division Bench of this Court held that appropriate Government is required to see as to whether the dispute exists between the parties i.e., employer & employee, and once a dispute exists appropriate Government has no jurisdiction to go into merits of the dispute. Similarly, the case in ***Alcobex Metals Vs. State (supra)*** was having distinguishing feature. It was a case where reference was earlier refused but on filing review application, State Government made reference for adjudication of industrial dispute to the Tribunal after realising that a referable dispute does exist and the employer challenged the order of reference by filing writ petition before this Court, therefore, Division Bench held that it cannot be said from any angle that the dispute when raised by the workmen was a stale dispute. In present facts situation, the decisions cited by Shri Samdaria renders no help to the petitioner.

However, it cannot be brushed aside that initially it is for appropriate Government to take decision on the material placed on record before it and to exercise powers U/s 12(5) of the Act, as to whether an industrial dispute exists which requires adjudication by the authority under the Act. In the facts & circumstances of the present case (*supra*), there is no material placed on record by petitioner either before Assistant Labour Commissioner or this

Court which at all make out a prima facie case for a referable dispute of violation of Ss.25G & 25H of the Act. Therefore, once there is no dispute arising prima facie from record, adjudication under the Act, in my opinion, is not required, and the decision impugned for declining by appropriate Government to refer the grievance raised by petitioner, does not offend to the exercise of powers U/s 12(5) of the Act so as to invoke writ jurisdiction of this Court Under Art.226 of the Constitution of India.

Consequently, this writ petition fails and is hereby dismissed. Costs made easy.

(Ajay Rastogi), J.

K.Khatri/1099.